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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,727	09/17/2003	Juan Antonio Moncada Andres	71601	4363

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EXAMINER

ROBERTSON, JEFFREY

ART UNIT

PAPER NUMBER

1712

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/664,727

Applicant(s)

MONCADA ANDRES ET AL.

Examiner

Jeffrey B. Robertson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☒ Claim(s) 1-20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1203.0205.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: the figure does not contain reference signs 54, 56, and 62, which are described on pages 12 and 13 of the specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: reference character 10 is not mentioned in the specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each

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drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The abstract of the disclosure is objected to because the property modifying component is initially abbreviated as "PCM", but then is abbreviated as "PMC" in the rest of the abstract. Correction is required. See MPEP § 608.01(b).

4. The disclosure is objected to because of the following informalities: on page 13, applicant uses the term "PCM". It appears that this should be changed to "PMC".

Appropriate correction is required.

Claim Objections

5. Claims 1-20 are objected to because of the following informalities: For claims 1, 10, and 20, in the situation where an abbreviation is used to represent a material such as VPET and PMC the abbreviation should be defined in the claim in the first instance where it occurs. In claim 1, line 2, claim 10, line 1, and claim 20, line 2, applicant uses the term "PCM" in the claim. It appears that this should be changed to "PMC". In addition, claim 20 sets forth a "load in bin". This should be changed to a "loading bin" to be consistent with the rest of the claim. Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 3-5 and 12-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For claims 3 and 12, applicant appears to be claiming a PMC that is required to be polyethylene terephthalate that is non-recycled. However, claims 4, 5, 13, and 14 are not limited to polyethylene terephthalate and contain other non-polyethylene terephthalate materials. Therefore, it is not clear what applicant is claiming in claims 3 and 12. It is also noted that the term "non-recycled PET material" is not defined in the specification.

For claims 4 and 13, applicant uses the term "substantial different" in these claims. However, this relative term is not defined in the specification. Therefore, it is not known how different the characteristics of the blend must be from unmodified VPET.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 1, 2, 6, 10, 11, 15, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harvey (U.S. Patent No. 3,700,140) taken with Nichols et al. (U.S. Patent No. 5,876,644).

For claims 1, 8, and 10, Harvey teaches a system for combining dissimilar granules where separate streams of granules are fed through a common feed pipe (conduit) in predetermined ratios to a container. Col. 1, lines 39-63. Harvey teaches that the container is a storage container. Col. 2, line 40. This storage container would then be distributed to an end user.

For claims 9 and 19, Harvey teaches that the dispensing of materials is controlled through a ratio programming board. Col. 2, lines 59-65.

For claims 1-5 and 10-14, Harvey does not expressly teach that VPET and a PMC are used as the granule materials.

For claims 1, 2, 10, 11, and 20, Nichols teaches blending post-consumer polyethylene terephthalate with virgin polyethylene terephthalate in col. 5, lines 24-31. However, Nichols fails to specifically teach the method or system used to accomplish the blending.

Nichols and Harvey are analogous art in that they both describe the blending of solid materials. It would have been obvious to one of ordinary skill in the art at the time of the invention to use the process set forth in Harvey for blending the materials set forth in Nichols. The motivation would have been that Nichols sets forth a blending operation but does not set forth how it is to be accomplished. One of ordinary skill in the art would have turned to Harvey for that information.

For claims 6 and 15, the ratio of PCR and VPER are result effective variables that would be determined according to the desired properties of the resulting blend.

12. Claims 1, 2, 6-11, and 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Powers et al. (U.S. Patent No. 6,403,748) taken with Nichols et al. (U.S. Patent No. 5,876,644).

For claims 1, 8, 10, and 20, Powers teaches a process that combines two different granules through a conduit. Powers teaches that the blend can then be

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discharged into a shipping container. Col. 3, lines 13-35. This shipping container would then be distributed to an end user.

For claims 7, 16, and 20, Powers teaches that the blends can be transferred to an empty bin. Col. 6, lines 10-12.

For claims 9 and 19, Powers teaches that the dispensing of materials is controlled through an automated system or computer model. Col. 5, line 58 through col. 6, line 4.

For claims 17 and 18, Powers teaches that the feed can be controlled through the use of valves, including rotary valves. Col. 6, lines 29-32.

For claims 6 and 15, the ratio of PCR and VPER are result effective variables that would be determined according to the desired properties of the resulting blend.

For claims 1, 2, 10, 11, and 20, Powers does not expressly teach that VPET and a PMC are used as the granule materials.

For claims 1, 2, 10, 11, and 20, Nichols teaches blending post-consumer polyethylene terephthalate with virgin polyethylene terephthalate in col. 5, lines 24-31. However, Nichols fails to specifically teach the method or system used to accomplish the blending.

Nichols and Powers are analogous art in that they both describe the blending of solid materials. It would have been obvious to one of ordinary skill in the art at the time of the invention to use the process set forth in Powers for blending the materials set forth in Nichols. The motivation would have been that Nichols sets forth a

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blending operation but does not set forth how it is to be accomplished. One of ordinary skill in the art would have turned to Powers for that information.

13. Claims 2-4 and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harvey (U.S. Patent No. 3,700,140) taken with Nichols et al. (U.S. Patent No. 5,876,644) as applied to claims 1 and 10 above, and further in view of Moller (U.S. Patent No. 5,110,521).

The limitations of claims 1 and 10 are described above. Harvey taken with Nichols does not expressly set forth the presence of other additives. For claims 2-4 and 12-14, in col. 2, lines 53-66, Moller teaches the addition of other additives to resin blend such as color or other additives.

Moller is analogous art because it teaches the addition of color and additive material to blends of virgin materials and regrind materials. It would have been obvious to one of ordinary skill in the art at the time of the invention to use such additives in the blends as needed to impart the desired properties to the resulting blends.

14. Claims 2-4 and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Powers et al. (U.S. Patent No. 6,403,748) taken with Nichols et al. (U.S. Patent No. 5,876,644) as applied to claims 1 and 10 above, and further in view of Moller (U.S. Patent No. 5,110,521).

The limitations of claims 1 and 10 are described above. Powers taken with Nichols does not expressly set forth the presence of other additives. For claims 2-4 and

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12-14, in col. 2, lines 53-66, Moller teaches the addition of other additives to resin blend such as color or other additives.

Moller is analogous art because it teaches the addition of color and additive material to blends of virgin materials and regrind materials. It would have been obvious to one of ordinary skill in the art at the time of the invention to use such additives in the blends as needed to impart the desired properties to the resulting blends.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Moller (U.S. Patent No. 5,261,743), Brownscombe et al. (U.S. Patent No. 5,554,657), and Borer et al. (U.S. Patent No. 6,852,256) are cited for general interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey B. Robertson whose telephone number is (571) 272-1092. The examiner can normally be reached on Mon-Fri 7:00-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy P. Gulakowski can be reached on (571) 272-1302. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey B. Robertson
Primary Examiner
Art Unit 1712

JBR